American Commercial Finance, Inc. *and* Local 580, International Brotherhood of Teamsters. Case 7–CA–49153

August 14, 2006

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND SCHAUMBER

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the complaint. Upon a charge and amended charges filed by the Union on December 15, 2005, and February 6 and March 14, 2006, respectively, the General Counsel issued the complaint on March 15, 2006, against American Commercial Finance, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the Act. The Respondent failed to file an answer.

On April 14, 2006, the General Counsel filed a Motion for Default Judgment with the Board. On April 20, 2006, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively stated that unless an answer was filed by March 29, 2006, all the allegations in the complaint could be considered admitted. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated March 29, 2006, notified the Respondent that unless an answer was received by April 5, 2006, a motion for default judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation with a place of business at 9608 Davis Highway, Dimondale, Michigan, has been engaged in the business of providing freight, pickup, and delivery service for DHL Express (USA), Inc. During the calendar year 2005, a representative period, the Respondent, in the course and conduct of its business operations described above, derived gross revenues in excess of $500,000. During this same period, the Respondent provided services valued in excess of $50,000 to DHL Express (USA), Inc., which is directly engaged in interstate commerce.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that Local 580, International Brotherhood of Teamsters (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, Sean Howard has held the position of president of the Respondent and has been a supervisor of the Respondent within the meaning of Section 2(11) of the Act, and an agent of the Respondent within the meaning of Section 2(13) of the Act.

The following employees of the Respondent (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time drivers and warehouse employees employed by the Respondent at its place of business located in the DHL Express (USA), Inc., distribution facility at 9608 Davis Highway, Dimondale, Michigan, but excluding all office clerical employees, and guards and supervisors as defined in the Act.

At all material times, by virtue of a certification of representative issued by the Board in Case 7–RC–22822 on January 28, 2005, the Union has been the designated collective-bargaining representative of the unit, and has been recognized as the representative by the Respondent.

At all material times, by virtue of Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

About December 14, 2005, the Union, by letter, requested that the Respondent furnish the Union with, "the name of the person who informed the Employer [Respondent] that approval from the International Union was required prior to implementation and execution" of a

collective-bargaining agreement over which the Union and the Respondent were bargaining.

The information requested by the Union, as described above, is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit.

Since about December 14, 2005, the Respondent has failed and refused to furnish the Union with the information requested by it.

About December 2005, the Respondent implemented changes in its health insurance policy for the unit by changing the benefit coverage of the policy.

The subject set forth above relates to wages, hours, and other terms and conditions of employment of the unit, and is a mandatory subject for the purposes of collective bargaining. The Respondent changed the benefit coverage of the health insurance policy without affording the Union notice and a meaningful opportunity to bargain with respect to this conduct and its effects on the unit.

Since about April 2005, during the course of collective-bargaining negotiations, the Respondent, by its agent Sean Howard, made previously agreed-to contractual provisions for the unit contingent on approval by a third party and refused to enter into a collective-bargaining agreement unless the Union signed an addendum presented by the Respondent regarding approval by a third party.

CONCLUSION OF LAW

By the conduct described above, the Respondent has failed and refused to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(1) and (5) by implementing changes in its health insurance policy for the unit by changing the benefit coverage of the policy, we shall order the Respondent to rescind the changes implemented in its health insurance policy for the unit employees and restore the status quo ante that existed prior to the unlawful changes. We shall also order the Respondent to make the unit employees whole for any expenses they may have incurred as a result of the Respondent's unlawful conduct, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

In addition, having found that the Respondent has failed and refused since December 14, 2005, to furnish the Union with the information that it requested on about that same date, we shall order the Respondent to furnish the Union with the requested information.

ORDER

The National Labor Relations Board orders that the Respondent, American Commercial Finance, Inc., Dimondale, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with Local 580, International Brotherhood of Teamsters as the exclusive representative of the employees in the following appropriate unit by unilaterally changing the benefit coverage of the unit employees' health insurance policy. The unit is:

> All full-time and regular part-time drivers and warehouse employees employed by the Respondent at its place of business located in the DHL Express (USA), Inc., distribution facility at 9608 Davis Highway, Dimondale, Michigan, but excluding all office clerical employees, and guards and supervisors as defined in the Act.

(b) Failing and refusing to furnish the Union with information necessary for and relevant to the performance of its duties as the exclusive collective-bargaining representative of the employees in the unit.

(c) Making previously agreed-to contractual provisions for the unit contingent on approval by a third party and refusing to enter into a collective-bargaining agreement unless the Union signs an addendum presented by the Respondent regarding approval by a third party.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Rescind the unilateral changes implemented December 2005 to the unit employees' health insurance policy and restore the status quo that existed in December 2005 prior to the Respondent's unilateral changes in the benefit coverage of the policy, until the Respondent bargains with the Union in good faith to an agreement or an impasse.

(b) Reimburse unit employees for any expenses resulting from its unlawful changes in their health insurance policy, with interest, in the manner set forth in the remedy section of this decision.

(c) Furnish the Union with the information it requested by letter on about December 14, 2005.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amounts due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Dimondale, Michigan, copies of the attached notice marked "Appendix."[1] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since April 2005.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. August 14 , 2006

Robert J. Battista, Chairman

Wilma B. Liebman, Member

Peter C. Schaumber, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[1] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to bargain collectively and in good faith with Local 580, International Brotherhood of Teamsters as the exclusive representative of the employees in the following appropriate unit by unilaterally changing the benefit coverage of the unit employees' health insurance policy. The unit is:

> All full-time and regular part-time drivers and warehouse employees employed by us at our place of business located in the DHL Express (USA), Inc., distribution facility at 9608 Davis Highway, Dimondale, Michigan, but excluding all office clerical employees, and guards and supervisors as defined in the Act.

WE WILL NOT fail and refuse to furnish the Union with information necessary for and relevant to the performance of its duties as the exclusive collective-bargaining representative of the employees in the unit.

WE WILL NOT make previously agreed-to contractual provisions for the unit contingent on approval by a third party and refuse to enter into a collective-bargaining agreement unless the Union signs an addendum presented by us regarding approval by a third party.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL rescind the unilateral changes implemented December 2005 to the unit employees' health insurance policy and restore the status quo that existed in Decem-

ber 2005 prior to our unilateral changes in the benefit coverage of the policy, until we bargain with the Union in good faith to an agreement or impasse.

WE WILL reimburse unit employees for any expenses resulting from our unlawful changes in their health insurance policy, with interest.

WE WILL furnish the Union with the information it requested by letter on about December 14, 2005.

AMERICAN COMMERCIAL FINANCE, INC.